U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: MAY 0 2 2012 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner is an associate research scientist at New York University School of Medicine (NYUSoM). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and supporting exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner claims eligibility for classification as an alien of exceptional ability in the sciences. The director observed that the record readily establishes that the petitioner, whose occupation requires at least a bachelor's degree and who holds two post-baccalaureate degrees, qualifies as a member of the professions holding an advanced degree. A determination regarding the petitioner's claim of exceptional ability would not affect the outcome of the AAO's decision. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on June 1, 2010. In an accompanying statement, the petitioner stated: "My duties are two-fold. First, I am responsible for developing a better understanding of the cellular DNA repair mechanism particular[ly] on the damaged normal cell. Second, I will study the unique interaction between the new repair enzyme and repair model of DNA damage." The petitioner explained that his research focuses on the methods by which cells repair their DNA after "damage by any environmental toxic agent." The petitioner observed that such damage, if unrepaired, could lead to cancer-causing mutations. In a separate statement, the

petitioner stated that he has "already made significant contributions to the elucidation of the DNA repair mechanisms of cancer therapy and to the development of new strategies for cancer treatment."

On his *curriculum vitae*, the petitioner listed four "main publications" and three "manuscripts that are to be published soon." The word "main" in "main publications" implies that the petitioner had other publications, but the record does not identify or establish the existence of more than four articles that the petitioner published before the petition's filing date. The petitioner described two of the three "manuscripts that are to be published soon" as being "[i]n preparation for submission" to *Cell* and the *Proceedings of the National Academy of Sciences*, respectively. If the manuscripts had not yet been submitted for peer review, then the petitioner was premature to assert that they "are to be published soon," as that phrase presumes and implies acceptance for publication. Subsequent submissions do not contain any evidence that the named journals, or any other journals, accepted the manuscripts.

The petitioner stated that his "papers have been cited by many renowned scientists." The petitioner submitted a list of 24 articles said to contain citations to his work, with one article from 2005 cited six times; another from the same year cited four times; and an article from 2004 cited 14 times (including one self-citation by the petitioner's co-authors). The petitioner attributed the list to the Google Scholar search engine at http://scholar.google.com.

The initial filing of the petition included letters attributed to eight witnesses. Most of the signatures on the letters are electronically reproduced rather than original. One such facsimile signature appears on a letter attributed to [redacted] Taiwan, where the petitioner earned all of his academic degrees. [redacted] supervised the petitioner's doctoral studies. The letter reads, in part: "In recognition of [the petitioner's] significant accomplishments, he has been invited as a speaker in the coming annual meeting (April 2010) of the American Association of Cancer Research (AACR) . . . an international honor society dedicated to recognition of research excellence."

AACR's own constitution, reproduced in the record, does not indicate that AACR is "an international honor society dedicated to recognition of research excellence." Rather, that document states:

> The mission of the Association is to prevent and cure cancer through research, education, and communication. The purposes are to foster research in cancer and related biomedical science; accelerate the dissemination of new research findings among scientists and others dedicated to the conquest of cancer; promote science education and training; and advance the understanding of cancer etiology, prevention, diagnosis, and treatment throughout the world.

The record contains no invitation letter from AACR to confirm that the petitioner's invitation was "[i]n recognition of [his] significant accomplishments." The AAO will revisit witness claims about AACR later in this decision.

A shorter letter, bearing [redacted] actual signature, deemed the petitioner "a true expert in the field of DNA repair and cancer research."

The electronically reproduced signature of [redacted] Health Research Institutes, appears on a letter that reads, in part: "I have known [the petitioner] since he joined [redacted] laboratory. . . . [The petitioner] has demonstrated exceptional ability at each and every level of scientific research." The letter contains few details about the petitioner's work.

The electronically reproduced signature of [redacted] University, Taiwan, appears on a witness letter containing general praise for the petitioner's abilities as a researcher, and the assertion that the petitioner's "most remarkable and exciting discovery . . . is finding some new DNA repair enzymes, which can recognize and incise the broad range of gene mutations and damages. **This unique finding lays a foundation for a new approach to cancer therapy**" (emphasis in original).

The remaining letters are attributed to witnesses on the NYUSoM faculty, or who have collaborated with the petitioner during his employment there.

A letter bearing the electronically reproduced signature of NYUSoM [redacted] reads, in part: "[the petitioner] has worked with me for 4 years. . . . I am well positioned to comment on the extraordinary level of his past and ongoing contributions to the field of molecular genetics." The letter listed several reasons why the petitioner "is an extraordinary scientist," the first of which was as follows:

> [The petitioner] is a member of the American Association of Cancer Research (AACR). . . . Only after reviewing an applicant's background and contributions to the field of cancer research, the Board determines the eligibility of the candidate. Only outstanding and well-recognized researchers and/or scholars are able to become professional members of this association. As an internationally recognized scholar, [the petitioner] was elected to become a member of AACR.

The petitioner submitted a copy of AACR's bylaws, Article I, Section 2 of which reads, in part:

> (a) Active membership shall be open to qualified scientists of any nation who have established a record of scholarly activity resulting in original, peer-reviewed publications relevant to cancer and biomedical research. The Board of Directors may invite into active membership other individuals who have made substantial contributions to cancer research in an administrative or educational capacity.
>
> (b) Associate membership shall be open to graduate students, medical students and residents, clinical fellows in related subspecialties, and postdoctoral fellows who are enrolled in educational or training programs that could lead to careers in cancer research. Associate members are not eligible to vote or to hold office.

In all, the bylaws list seven categories of membership. There is no "professional member" category, despite the letter's use of that phrase. For a researcher, active membership requires neither "outstanding" nor "well-recognized" research. It requires only a history of "relevant" publications.

The record shows that the petitioner became an associate member of AACR in July 2009. The record does not reflect any subsequent promotion to active membership. Thus, the available evidence indicates that the petitioner became a member of AACR through his enrollment in a postdoctoral training program, not because he is "an internationally recognized scholar."

Based on the above information, the AAO concludes that the letter attributed to Prof. Tang has exaggerated the significance of the petitioner's associate membership in AACR. This demonstrable exaggeration calls into question the overall credibility of the claims in the letter. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The petitioner signed an introductory statement that quoted from the above letter, and he also submitted the membership information from AACR. Thus, the petitioner was, or should have been, aware that he was submitting inaccurate information in support of his petition. Because of the demonstrably inaccurate claims about the petitioner's AACR membership, the AAO cannot grant this letter significant evidentiary weight, and will not discuss its other claims at length.

The next letter bears the electronically reproduced signature of [redacted]. The letter stated that the petitioner "is an exceptional scientific investigator who possesses the unique talents necessary to conduct valuable medical research." The letter described several of the petitioner's projects in technical detail, describing each as an "important contribution" or "important finding" in the diagnosis or treatment of certain types of lung cancer.

A letter bearing the electronically reproduced signature of [redacted] described several of the petitioner's research findings, stating, for example:

> The most important discovery made by [the petitioner] involved the investigation of a new and novel DNA repair model in E.coli and mammalian cells. Specifically, he used DNA fragments irradiated with UV light or modified with BPDE to demonstrate this novel repair enzyme that recognizes both classic DNA adducts. This discovery is novel, exciting, and far-reaching.

The last two letters bear the electronically reproduced signatures of collaborators who worked with the petitioner on the manuscript said to be in preparation for submission to *Cell*. The letter attributed to [redacted] College of Osteopathic

[redacted] indicated that the petitioner "has developed a new model to help understand the repair of the DNA damage produced by the UV radiation in sunlight. This work is being readied for publication."

The letter attributed to [redacted] Georgia, indicated that the petitioner's "important discovery demonstrated the great potential of endonuclease V in therapy against skin cancer."

On January 12, 2011, the director issued a request for evidence, instructing the petitioner to "explain what the applicant has done above and beyond performing the routine, and normal duties that a medical scientist performs during the course of their duties." The director also requested further evidence regarding the citation of the petitioner's published work.

The petitioner's response included a printout from the ISI Web of Science database listed 27 citations of the petitioner's work, including the self-citation mentioned previously. The petitioner submitted copies of some of the citing articles, including a self-citation. Counsel asserted that the authors of these articles "have specifically **discussed the merits of [the petitioner's] work**" (counsel's emphasis). The identified examples, however, do little to show that the researchers have singled the petitioner's work out as being of unusual interest. One study listed the petitioner's study (along with another) as being among "[f]ew studies [that] provide insights on the effect of tobacco smoke and inflammation." In another article, researchers prefaced a mention of the petitioner's findings with the word "[i]nterestingly." The petitioner failed to show that these comments served to spotlight the petitioner's work in comparison to the dozens of other works cited in each article. The purpose of citation is to identify the source of specific facts or assertions, and therefore it is unremarkable that the citations of the petitioner's work should accompany remarks about what it is that the authors are citing.

Counsel asserted that the petitioner's membership in Sigma Xi, "a prominent scientific research association . . . , also confirms [the petitioner's] significant contributions." The petitioner had previously submitted materials from Sigma Xi, and resubmitted some of them in response to the request for evidence. In a letter welcoming the petitioner to the organization, [redacted], stated:

> With your induction into the Society, you have joined a cadre of distinguished and committed researchers around the world, numbering nearly 60,000 active members today. . . .
>
> We're proud that your outstanding achievements have earned you a place without our international community of scientists and engineers.

The letter, which does not include any information about the petitioner's work, appears to be a "form" letter issued to new members. The boast of "nearly 60,000 active members" is inconsistent with the claim that Sigma Xi has a restrictive or exclusive membership policy. A Sigma Xi document with the heading "Membership Qualifications" reads, in part:

Full Membership
An individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science is eligible for election to Full Membership. This noteworthy achievement must be evidenced by publication as a first author on two different articles published in a refereed journal, patents, written reports or a thesis or dissertation. Please see the appropriate sections of the Constitution and Bylaws for additional information. . . .

Associate Membership
An individual who has conducted independent investigation and written a report concerning their research is eligible for election to Associate Membership. This initial research achievement can be in a field of pure or applied science. The individual is expected to later achieve the requirements for Full Membership. . . .

Promotion to Full Membership
An Associate Member may be promoted to Full Membership once they have published as primary author or demonstrated other noteworthy achievements in research.

The above language implies that publication as a primary author is, by itself, a "noteworthy achievement" of sufficient caliber to warrant full membership. Bylaw II, Section 2B of Sigma Xi's bylaws is consistent with that finding; it reads, in part: "Noteworthy achievement in research specified for election of promotion to full membership . . . must be evidenced by publications, patents, written reports or a thesis or dissertation." These materials indicate that Sigma Xi considers every thesis, dissertation, and first-authored article to be a "noteworthy achievement," and that "nearly 60,000" people still active in the field have accomplished such "noteworthy achievements." Even if the statute, regulations, or case law indicated that "noteworthy achievements" guarantee the national interest waiver (which none of them do), Sigma Xi's understanding of that term is clearly broader than USCIS can contemplate for purposes of the waiver. Sigma Xi's membership exceeds the total annual allocation of immigrant visas in the relevant immigrant classification.

The director denied the petition on August 3, 2011. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, but found that the petitioner had not shown that his achievements set him apart from others in that occupation to show that a waiver of the job offer requirement would be in the national interest. The director quoted some of the witness letters but concluded that "these letters are general in nature, and do not establish the petitioner's abilities are greater than their [*sic*] peers."

On appeal, the director stated that the director's "decision is so vague that it did not provide the petitioner with an opportunity to mount a meaningful rebuttal or appeal." A vague decision can sometimes prejudice a petitioner's ability to appeal that decision, but it is important to recall that the director has no obligation to rebut a presumption of eligibility. Rather, the petitioner must establish eligibility for the benefit sought. See 8 C.F.R. § 103.2(b)(2). The petitioner's submission consists,

to a great extent, of a catalog of the petitioner's activities, accompanied by the assertion that those activities qualify him for the waiver. The director found that the petitioner had not submitted sufficient objective evidence to allow a meaningful comparison between the petitioner and other qualified professionals in his field.

Counsel asserted that several witnesses provided substantial details about the petitioner's work. The director did not specifically state that the letters lacked such details. Rather, the director found that the petitioner's evidence was very general with respect to how his work qualifies him for the waiver.

Counsel states: "[redacted] Cincinnati is **an independent witness** who became aware of Petitioner's research breakthroughs at a major international conference and who testified specifically [regarding] the remarkable contribution of petitioner's two novel findings" (counsel's emphasis). The record contains no letter from [redacted] An exhibit list submitted with the initial filing mentioned no such letter, and neither did counsel's cover letter that otherwise catalogued the exhibits accompanying the response to the request for evidence. In any event, the director did not deny the petition owing to a lack of witness letters.

The petitioner again submits copies of articles containing citations to his work, the total number having climbed to 34. The petitioner submits no evidence to compare the citation rate of his articles against those of others in his specialty.

The petitioner submits copies of two further letters on appeal. [redacted], credits the petitioner with a "novel finding" regarding cancer-causing genetic mutations that may result from cigarette smoking. The petitioner published his work on this subject in 2005. [redacted]r asserts that some of the petitioner's work involving skin cancer "**brought wide media coverage and remarkable attention in the field**" (emphasis in original). The record contains no evidence of the claimed "wide media coverage and remarkable attention," and the vague assertion that they occurred cannot suffice. As shown previously, the record contains unreliable witness statements on other matters.

[redacted] "[d]igitally signed" a letter, stating that he is "quite familiar with [the petitioner's] achievements through his published work as well as my knowledge of the exceptional high regard of him by [redacted] focused on a 2005 paper by the petitioner, which reported a "milestone finding, which has significantly impacted the scientific community." [redacted] did not explain or identify the visible signs of this claimed impact.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

A number of witnesses purport to attest to matters of fact rather than of expert opinion, and the record strongly refutes at least one such claim of fact. Because witness letters play a supporting role rather than a central one, witnesses' claims that a given petitioner's work represents a "milestone" or other words to that effect carry little weight without objective documentary support in the form of materials that, unlike the letters, did not come into existence solely or primarily in furtherance of the petition. A number of witnesses attested to the claimed significance of manuscripts that the petitioner prepared shortly before the filing date and intended to submit to respected journals. Subsequent submissions do not show that the intended journals accepted the papers, nor do they provide any other information about how the papers fared in the peer review process. The omission is not a trivial one, given that the waiver application rests on the assertion that the petitioner has earned, and continues to maintain, an international reputation as an especially important researcher. The record, in general, shows a significant gulf between what the witnesses claim and what the objective evidence actually shows.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.